

# Supreme Court of Kentucky

## ORDER

Upon recommendation of the Hon. Perry Lewis, Chief Judge of the 38<sup>th</sup> District Court, the local rules of the 38<sup>th</sup> Judicial District are amended as set forth in the attached order.

Entered: January 21, 2000.

Joe E. Mount  
CHIEF JUSTICE



COMMONWEALTH OF KENTUCKY

COURT OF JUSTICE

38TH JUDICIAL DISTRICT

BUTLER, EDMONSON, HANCOCK AND OHIO COUNTIES

THIRD FLOOR

OHIO COUNTY COMMUNITY CENTER

HARTFORD, KENTUCKY 42347

TELEPHONE:

(502) 298-3235

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PERRY LEWIS  
JUDGE, DIVISION II

January 4, 2000

The Honorable Joseph E. Lambert  
Chief Justice of the Supreme Court of Kentucky  
Capitol Bldg., Room 231  
700 Capitol Building  
Frankfort, Kentucky 40601

Dear Mr. Chief Justice:

We are changing our court schedule in order to increase our efficiency. It is necessary that our local rules of court be amended to reflect our new schedule.

We hope you will find our proposed rule change satisfactory. Please advise if you need more information. Thank you.

Sincerely,

  
Perry Lewis, Chief Judge  
38th District Court

PL/ah

COMMONWEALTH OF KENTUCKY  
38TH JUDICIAL DISTRICT  
BUTLER, EDMONSON, HANCOCK & OHIO COUNTIES

ORDER AMENDING 38 DR 2 (B) AND (D) OF THE RULES OF COURT  
PRACTICE AND PROCEDURE.

It is hereby ordered that 38 DR 2 (B) is amended to read as  
follows:

(B) EDMONSON COUNTY

Court will be in session at 9:30 A.M. each Tuesday, Division  
I will be in session on February 2, 2000 and Division 2 will be in  
session on February 9, 2000.

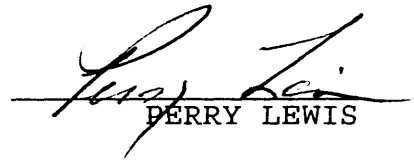
It is hereby ordered that the first paragraph of 38 DR 2 (D) is  
amended to read as follows:

(D) OHIO COUNTY

Division I will be in session 8:30 A.M. each Friday (beginning  
February 4, 2000.

The above amendment to the Rules of Court Practice and  
Procedure of the 38th Judicial District are adopted, effective  
February 2, 2000, pursuant to SCR 1.040 (3) (a), RCr 13.02 and other  
applicable law and shall apply to all criminal and civil matters  
filed or pending, subsequent to certification to the Honorable  
Chief Justice of the Supreme Court of Kentucky.

This 4th day of January, 2000.

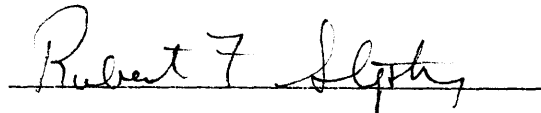
  
PERRY LEWIS

# Supreme Court of Kentucky

IN RE: ORDER APPROVING AMENDED LOCAL RULES, 38TH  
JUDICIAL DISTRICT, BUTLER, EDMONSON, HANCOCK  
& OHIO COUNTIES

The Amended Local Rules of the 38th Judicial District,  
Butler, Edmonson, Hancock & Ohio Counties, is hereby approved by  
the undersigned.

ENTERED February 13, 1998.

A handwritten signature in cursive script, reading "Robert F. Sligh", is written over a horizontal line.

Chief Justice

COMMONWEALTH OF KENTUCKY  
38TH JUDICIAL DISTRICT  
BUTLER, EDMONSON, HANCOCK & OHIO COUNTIES


ORDER SETTING RULES OF COURT PRACTICE AND PROCEDURE

IT IS HEREBY ORDERED:

These Rules of Court Practice and Procedure of the 38th Judicial District are adopted pursuant to SCR 1.040(3)(a), RCr 13.02, and other applicable law, and shall apply

to all criminal and civil matters filed or pending, subsequent to certification to the Honorable Chief Justice of the Supreme Court of Kentucky.

This 10th day of July, 1997.

  
PERRY LEWIS  
CHIEF DISTRICT JUDGE  
OHIO COUNTY COMMUNITY CENTER  
130 E. WASHINGTON STREET  
HARTFORD, KENTUCKY 42347

38 DR 1 ASSIGNMENT OF CASES

(A) CRIMINAL

Cases in each county will be divided between the divisions according to the day the offense occurred. If an offense occurred on an odd day of the month the case will be in Division I, if on an even day of the month the case will be in Division II.

When a citation or criminal summons is issued, the Defendant will be Ordered to appear before the appropriate division within 14 days. When a Defendant is arrested he or she will be released on bond to appear within 14 days in the appropriate division.

In the event a Defendant is directed to appear in the wrong division of Court for arraignment, the judge can direct the Defendant to appear in the appropriate division or arraign the Defendant and assign the case to the proper division.

The Judges may by agreement modify this procedure whenever a court date is cancelled.

(B) CIVIL

Civil cases will be divided equally between Divisions I and II. Odd numbered cases will be assigned to Division I and even numbered cases will be assigned to Division II.

(C) SMALL CLAIMS

Small claims will be divided equally in the same manner as civil case. However, when a Plaintiff files more than one case on the same day, each of these cases but not more than 5 will be scheduled for trial on the same day (i.e. Division I) and the clerk

will assign an equal number of cases to the other division (i.e. Division II) before assigning another case to (Division I).

(D) JUVENILE

Juvenile offenders will be divided equally between the divisions in the same manner as criminal cases.

(E) MENTAL HEALTH

Adult Guardianship (KRS Chapter 387) will be divided equally between the division in the same manner as civil cases.

(F) 202A PROCEEDINGS

All 202A Petitions and Certifications will be presented to the Trial Commissioner in Butler, Edmonson and Hancock Counties, unless a District Judge is in the County or unless the Trial Commissioner is out of state, cannot be found or is unable to act. Hearings on 202A petitions will be handled in the same manner.

In the event the trial commissioner cannot be found or is out of state or unable to act, Petitions and Certifications will be presented to the District Judge who is "on call" and that judge will hold a hearing on the petition if necessary. In Ohio County (Monday thru Friday 8:00 A.M. to 5:00 P.M.) all Petitions and Certifications will be presented to the Judge who is holding Court or if Court is not in session to the Judge who is in Ohio County. If Court is not in session and neither judge is in Ohio County, petitions and certifications will be presented to the judge who is "on call." After hours (5 P.M. to 8:00 A.M.) and on weekends and holidays, petitions and certifications will be presented to the judge who is "on call."

(G) PROBATE

PROBATE CASES IN OHIO COUNTY will be assigned according to the date of birth of the decedent and in guardianship cases the date of birth of the ward. When the birth date is on an odd day of the month the case will be assigned to Division I, when the date of birth is on an even day the case will be assigned to Division II. Name changes will be divided between the Divisions on the same basis. PROBATE CASES IN BUTLER, EDMONSON & HANCOCK COUNTIES will be scheduled by the attorney for the petitioner. If the petitioner does not have an attorney they will be scheduled as in Ohio County unless that would cause undue hardship on the petitioner or other interested parties.

When a trial commissioner appoints an executor or an administrator the Circuit Court Clerk will assign each odd numbered file to Division I and each even numbered file to Division II for inventories and settlements, etc.

(H) DOMESTIC VIOLENCE

Domestic Violence cases will be scheduled according to the Order signed by the Circuit Judge and the District Judges on July 12, 1996 and the Domestic Violence Protocol for the District and Circuit Court of the 38th Judicial Circuit dated January 14, 1998.

38 DR 2 COURT SESSIONS

(A) BUTLER COUNTY

This Court will be in session at 8:00 A.M. each Thursday.

Division I will be in session on July 17, 1997 and Division II will be in session on July 10, 1997. Thereafter each Division will be in session every other Thursday.

All adult criminal arraignments are to be at 8:00 A.M.

Civil proceedings and Probate can be scheduled at 10:00 A.M. or 1:00 P.M.

Small Claims and Domestic Violence cases are to be scheduled at 1:00 P.M.

Juvenile and other confidential proceedings are to be scheduled at 2:00 P.M.

**(B) EDMONSON COUNTY**

Court will be in session at 9:30 A.M. each Friday. Division I will be in session on July 11, 1997 and Division II will be in session on July 18, 1997. Each division will be in session every other Friday thereafter.

All adult criminal arraignments are to be scheduled for 9:30 A.M.

All probate and small claims are to be scheduled at 11:00 A.M.

All civil cases are to be scheduled at 1:00 P.M.

All juvenile and other confidential proceeding are to be scheduled at 2:00 P.M.

**(C) HANCOCK COUNTY**

District Court will be scheduled each Wednesday at 10:00 A.M. Division I will be in session on July 23, 1997 and Division II, the following Wednesday. Each Division will be in session every other Wednesday thereafter.

All adult criminal arraignments will be at 10:00A.M.

All probates will be scheduled at 11:00 A.M.

All small claims and civil cases will be scheduled at 1:00 P.M.

All juvenile and other confidential proceedings will be scheduled at 2:00 P.M.

(D) OHIO COUNTY

Division I will be in session 8:30 A.M. each Tuesday.

Division II will be in session 8:30 A.M. each Monday.

All adult criminal arraignments will be scheduled for 8:30 A.M. Pre-trial conferences are to be scheduled at 10:00 A.M. and 1:00 P.M.

All probates are to be scheduled at 9:30 A.M.

All civil actions are to be scheduled for 10:00 A.M.

All juvenile and other confidential proceedings are to be scheduled at 2:00 P.M.

Small claims and EURISA actions will be scheduled at 9:00 A.M. each 4th Wednesday, beginning July 16, 1997 in Division I, and at 9:00 A.M. each 4th Thursday, beginning July 17, 1997 in Division II.

**38 DR 3 MOTIONS**

1. Motions must be filed with the Circuit Clerk at least 48 hours prior to the scheduled hearing, excluding Saturdays, Sundays and holidays unless a different period is fixed by the Rules of Civil Procedure or applicable statute. Each motion must be served

on the opposing counsel or party not represented by counsel by the methods specified in CR 5.02.

2. Copies of all motions filed shall be served or mailed to the presiding Judge, at his/her office in the Ohio County Community Center, Hartford, Kentucky.

3. All motions shall be separately paragraphed and separately numbered.

4. All motions will be filed in the division where the case has been assigned.

**38 DR 4 APPEARANCES, SUBSTITUTIONS, STIPULATIONS:**

After a party has appeared by counsel he may not appear or act in his own behalf, unless the attorney or the party tenders an agreed order permitting the attorney to withdraw; or unless the party has been advised by his counsel to so appear for a specific purpose.

An attorney may for good cause appear at an arraignment or pre-trial conference via telephone, provided his client appears in court (unless his appearance has been waived by the court).

**38 DR 5 CONTINUANCES:**

All cases set for trial or pre-trial conference shall be heard at the time and date set unless continued pursuant to the Kentucky Rules of Civil or Criminal Procedure.

### 38 DR 6 PETITIONS

All petitions (except emergency matters) shall be filed not later than 48 hours, prior to the scheduled hearing excluding Saturdays, Sundays, and holidays, unless a different period is fixed by the rules of Civil Procedure or applicable statute.

All petitions, motions and pleadings by attorneys will be typewritten.

Persons proceeding pro se are to file typewritten motions and petitions, etc. If they do not have access to a typewriter they may use ink.

When a party proceeds pro se using AOC forms, the Clerk is to advise the party filing the form, that the court will refuse to act until the form is properly completed.

### 38 DR 7 SUBPOENAS

All subpoenas shall be delivered to the Sheriff or other process server at least 14 days prior to the trial date, except when a case is set for trial less than two weeks prior to the trial date, in which event the subpoenas shall be delivered not later than 48 hours after the case is set for trial. No continuances will be granted solely because a witness has not been subpoenaed unless this rule was complied with.

### 38 DR 8 ORDER OF TRIAL

1. Due to the great number of cases to be assigned for jury trial, and the large number of cases that are disposed of without a trial, at or near the day of trial, it is necessary to set several matters for each jury trial date. Cases assigned for a jury trial date will be taken in the following order:

(a) Defendants who are incarcerated

on the charge;

(b) Defendants charged with Driving While Under the Influence.

(c) Disability determinations;

(d) Criminal cases in the order they are filed;

(e) Civil cases in the order they are filed;

(f) Paternity cases.

2. No more than two non-criminal cases and a total of eight cases will be scheduled at any jury trial date except in an emergency.

3. All parties shall notify the court within 24 hours of the settlement of any case set for jury trial.

#### 38 DR 9 PREPARATION FOR ARRAIGNMENT

The court will not arraign any defendant until the following steps have been completed:

1. The charging statement has been filed in the Circuit Court Clerk's office.

2. The Circuit Clerk has opened a Court file on the case.

3. The case has been printed on the Court docket.

4. A defendant who has not made bond must have been interviewed by Pre-Trial Services.

In the event Pre-Trial Services is unable to interview a defendant before court adjourns, the court will arraign the defendant, but the absence of the Pre-Trial Release Report may adversely affect the defendant's bond.

#### 38 DR 10 COURTROOM DECORUM

(a) All parties shall remain outside the jury rail until their particular case is called for hearing. When each case is called the parties shall proceed to the bench or podium (or counsel table). Attorneys may remain inside the well of the Court to expedite proceedings. The attorneys and parties shall not approach the bench without permission requested and granted. No smoking, food or drink shall be permitted in the Courtroom except jurors and persons seated at a bench or table may have a non-alcoholic beverage. All settlement negotiations and plea bargaining will take place outside of the Courtroom or during periods when Court is in recess. Attorneys, if physically able,

should stand when addressing the Court unless allowed to remain seated by permission of the Court.

(b) No one will contact or approach the court clerk without the permission of the Court.

(c) Attorneys should be properly and respectfully attired including, for male attorneys, coats and ties, and for female attorneys, attire at the same level of formality. Hats, overcoats, raincoats, and umbrellas will be left outside the railing during hearings.

(d) It shall be the responsibility of the Bailiff to maintain order in the Court. The Bailiff shall request anyone (including attorneys and court personnel) who is talking loudly during court proceedings to leave the courtroom. He shall also advise anyone who is standing in the courtroom that they must sit or leave the courtroom. He is to promptly advise the Court if anyone fails to comply with his request.

#### **38 DR 11 ENHANCEMENT OF PENALTIES**

In any case where the penalty is enhanced by a prior conviction or convictions, it shall be the prosecutor's responsibility to properly charge the defendant. This rule shall not limit or interfere with the prosecutors discretion.

#### **38 DR 13 CRIMINAL RECORDS CHECK**

Whenever a defendant is charged with violating KRS 189a.010(1) the Pre-trial Release Officer shall file a copy of the defendant's criminal record and his pre-trial report in the Circuit Court Clerk's office before the defendant is arraigned.

#### **38 DR 14 RECORDING**

The Clerk shall be responsible for properly recording all court proceedings and if so directed by the presiding judge, all orders and dispositions on the court docket.

No one will contact or approach the court clerk without requesting permission of the court.

**38 DR 15 FILING CHARGING INSTRUMENTS**

Any officer issuing a citation, or executing a warrant or criminal summon shall file the original citation, complaint and warrant or summons in the Circuit Clerk's office as soon as possible, and in any event not less than 48 hours excluding Saturdays, Sundays, and holidays before the scheduled arraignment. Failure to do this may result in dismissal of the charge or charges against the defendant or the release of the defendant ROR.

**38 DR 16 DOMESTIC VIOLENCE ADVOCATES**

111 Domestic Violence advocates should meet with victims before court. Advocates can only approach the bench with a victim if he/she has the victims permission.

**38 DR 17 JUVENILE SESSION-NOTICE TO VICTIMS**

The Circuit Court Clerk shall make an attempt to notify the victim, the victim's parents or legal guardian, or, if emancipated, the victim's spouse or legal representative by letter delivered by U.S. Mail of the time, date and place of all formal juvenile proceedings as required by KRS 610.060.

**38 DR 18 JUVENILE SESSION-PRIVATE COUNSEL**

The County Attorney shall represent the Commonwealth whenever a dependency, neglect or abuse petition has been filed. Petitioners in such case may employ private counsel to prepare a

juvenile petition. This does not authorize the release of any confidential information to the private attorney or authorize him to examine the juveniles file or attend any juvenile proceeding.

#### **38 DR 19 CITATION OF RULES**

These rules may be cited as "38 DR       " or Rules of the 38th District Court."

#### **38 DR 20 ENFORCEMENT OF RULES**

These rules may be enforced by the court's contempt powers.

#### **38 DR 21 DISMISSAL FOR FAILURE TO PROSECUTE**

When any action has remained on the civil or criminal docket for 9 months or more without any step being taken indicating an intention to prosecute the action, the court may dismiss it for want of prosecution either on its own motion or on motion of either party.

#### **38 DR 22 DISTRIBUTION OF RULES**

1. Each Circuit Clerk shall distribute copies of these rules by U.S. mail or hand delivery to the attorneys who maintain an office in his or her county.

2. A copy of these rules shall also be delivered to any attorney subsequently becoming a member of the 38th District Bar or any attorney requesting a copy.

#### **38 DR 23 AMENDMENT OF RULES**

These Rules may be amended or modified by appropriate Order of the Court and, by approval of the Supreme Court of Kentucky.